1-4100-10033-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA STATE RETIREMENT SYSTEM

In the Matter of the Retirement Benefits of the Honorable Lawrence R. Yetka

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

The above-entitled matter came on for hearing before the Honorable George A. Beck, Administrative Law Judge, on Wednesday, November 1, 1995, at 10:00 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, in the city of Minneapolis, Minnesota. The hearing concluded on that date. The record in this matter closed on November 14, 1995, upon receipt of the final memorandum from a party.

Thomas L. Fabel, Esq., of the firm of Lindquist & Vennum, 4200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402-2205, appeared on behalf of the Petitioner, Lawrence R. Yetka. Jon K. Murphy, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared representing the staff of the Minnesota State Retirement System.

This recommended decision is a recommendation only, not a final decision. The Board of Directors of the Minnesota State Retirement System will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Under Minn. Stat. § 14.61, the final decision of the Board of Directors shall not be made until this recommended decision has been available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this recommended decision to file exceptions and present argument to the Board. The parties should contact David Bergstrom, Executive Director, Minnesota State Retirement System, 175 West Lafayette Frontage Road, St. Paul, Minnesota 55107-1425, to determine the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is, what is the appropriate retirement benefit payable to the Petitioner.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Lawrence R. Yetka ("Justice Yetka" or "the Petitioner") became an associate justice of the Minnesota Supreme Court on July 3, 1973. He then served continuously as a Justice until 1993.

2. The Minnesota State Retirement System ("MSRS") is charged by law with the policy-making, management, and administrative functions governing the operation of the judges' retirement fund and the administration of those portions of Chapter 490 of Minnesota Statutes dealing with judicial retirement.

3. The 1973 Legislature passed a new retirement plan for judges, commonly called the "Uniform Plan", which was effective January 1, 1974. Under the prior, or "old plan", a Justice qualified for a retirement pension by serving two full terms, or 12 years. The amount of the retirement annuity under the old plan was set at 1/2 of "the compensation allotted to his office at the time of his retirement plus two and one-half percent of the compensation allotted to his office at the time of his retirement" for each year which the Justice served in office in excess of two full terms.[1] (Ex. 26.) Since Justice Yetka served 19 years, he would be entitled to a pension of 67 1/2 percent of his final compensation under the old plan. Judges made no contribution towards their pension under the old plan and the benefit amounts were paid from appropriated general revenues.

4. Under the new Uniform Plan, a Judge's pension benefit was based upon the average salary for the highest five years prior to retirement. Since July 1, 1980, Judges have received 3 percent of the final average compensation multiplied by the number of years of service. Under the Uniform Plan, a Judge contributed 6.27 percent of salary to the Judge's Retirement Fund and the State of Minnesota contributed 22 percent of the Judge's salary to the retirement fund.

5. Judges in office on January 1, 1974, such as Justice Yetka, had the option of participating in either plan. Justice Yetka elected to participate in the new Uniform Plan. The new Uniform Plan specifically provided, however, that any Judge in office prior to January 1, 1974, could elect to have their retirement annuity computed under the old plan if it were more advantageous to do so, even though they had elected to participate in the Uniform Plan. Justice Yetka opted to participate in the Uniform Plan, but also opted to have his annuity calculated under the old plan.

6. By virtue of having elected to participate in the new Uniform Plan, Justice Yetka contributed $43,593.97 to the Judge's Retirement Fund as an employee contribution while he served as Associate Justice. (Ex. 2., Ex. 25.) The Uniform Plan had additional benefits over the old plan.

7. When a Judge covered under the Uniform Plan retires, a lump sum is transferred by MSRS to the Post-Retirement Fund to cover the payment of the annuity. This lump sum amount is the present value of future payments; for example, an amount equal to 130 times the monthly benefit. This transfer is made from the general fund for Judges covered under the old plan. The Post-Retirement Fund provides cost-of-living increases to retirees.

8. Justice Yetka's term of office was due to expire in January of 1993. The Mandatory Retirement Law would have required him to retire by October 31, 1994. Justice Yetka requested and received from Governor Arne Carlson an extension of his term of office until October 31, 1994. The Minnesota Supreme Court determined, however, that this extension was invalid[2] and Justice Yetka's seat was then filled by an election won by Justice Alan C. Page in the fall of 1992.

9. The Petitioner met with Douglas Mewhorter, Assistant Director of MSRS, in October of 1992. They discussed his retirement and Mr. Mewhorter gave Justice Yetka a number of documents to be filled out and returned, including an application for an annuity. Justice Yetka returned the documents to Mr. Mewhorter with a letter dated October 22, 1992. (Ex. 3.) The application for annuity signed by the Petitioner indicated that his last day of service was January 2, 1993. (Ex. 4.) Justice Yetka also submitted an election of distribution for his deferred compensation plan in which he certified that he would be terminating employment on January 2, 1993. (Ex. 5.)

10. Judith L. Rehak, Administrative Services Director of the Supreme Court, wrote a letter to Justice Yetka on December 4, 1992. (Ex. 7.) The letter indicated that the Petitioner would retire from service on the bench on January 3, 1993. The letter stated that the Petitioner was entitled to payment for one day in 1993 (January 1, 1993), the number of Judge working days that year through his retirement of January 3, 1993.

11. The Petitioner sent a letter to Mr. Mewhorter on December 18, 1992, stating that he had received notice that all Judges would receive a 6 percent pay increase on January 1, 1993. He asked Mr. Mewhorter if his pension would reflect the pay increase effective January 1st since his term of office did not expire until January 3, 1993. (Ex. 9.)

12. In 1989, the State Compensation Council recommended that Judges be given a 6 percent increase effective January 1, 1992. (Ex. 23.) However, in 1991, the Minnesota Legislature specified that this recommendation "must not take effect until January 4, 1993." (Ex. 24.)

13. Mr. Mewhorter sent a Memorandum dated December 28, 1992, to Judith Rehak at the Supreme Court advising her that, according to statute, Justice Yetka's benefits would be based on the "compensation allotted to the office of the Justice at the time of retirement" and asking her to advise MSRS of the Petitioner's final compensation rate. Mr. Mewhorter quoted and applied the 1992 version of Minn. Stat. § 490.025, subd. 2, rather than the 1973 version. (Ex. 10.) Mr. Mewhorter then wrote to the Petitioner to notify him that he had made the inquiry to Ms. Rehak. He also advised Justice Yetka that if his compensation rate increased on January 1, 1993, and he received compensation for that day, then his benefit would be based on that salary. (Ex. 11.)

14. By a Memorandum dated December 29, 1992, Ms. Rehak advised Mr. Mewhorter that the 6 percent salary increase could not take effect until January 4, 1993, and stated that the annual salary of a Supreme Court Associate Justice on January 1, 1993, was $89,052.00, which was the figure before the 6 percent increase. (Ex. 12.)

15. MSRS receives reports of pension contributions from employers periodically. The last payroll report sent to MSRS by the Supreme Court was for the payroll period ending December 29, 1992, and shows that payment was made for 7.9 hours. (Ex. 2.) Judges are paid prior to their period of service, rather than after.

16. Justice Page was sworn in as an Associate Justice of the Minnesota Supreme Court in a private ceremony on January 4, 1993, at 8:30 a.m. and at a public ceremony at 1:30 p.m. on the same day. (Ex. 20.) Justice Page received the 6 percent salary increase which was implemented on that date.

17. The Petitioner was willing and able to serve as a Justice at any time prior to the qualification of his successor. (Ex. 19.)

18. January 1, 1993, was a Friday and January 4, 1993, was a Monday.

19. Ms. Rehak wrote to Justice Yetka specifically advising him, in a letter dated January 11, 1993, that the salary increase for Judges would be implemented on January 4, 1993, and providing him with a copy of the legislative language setting that date. (Ex. 13.)

20. MSRS sent a letter to Justice Yetka dated January 28, 1993, advising him that he would be receiving his first benefit check about February 1, 1993. The letter stated that his annual salary was determined to be $89,052.00, which resulted in a monthly benefit amount of $3,936.21 under the option chosen by the Petitioner. The letter also states that the annuity began to accrue January 3, 1993, and that the first check would cover the period from January 3, 1993 through February 28, 1993. (Ex. 14.)

21. The Petitioner received his first retirement benefit check on January 28, 1993, and has been receiving a monthly benefit check in the amount of $3,936.000 since that time.

22. Justice Yetka was not allowed to file, and did not file, for social security benefits until January 4, 1993. ((Ex. 19.)

23. On January 24, 1995, the Petitioner's attorney wrote to the Executive Director of MSRS asking that a mistake in the calculation of Justice Yetka's retirement benefits be corrected. The letter argued that since Justice Yetka's final day in office was January 4, 1993, and since the 6 percent salary increase was effective that date, his benefit amount should be based upon the salary implemented on January 4, 1993, with the 6 percent increase. (Ex. 16.)

24. The Executive Director replied to Petitioner's attorney in a letter dated June 7, 1995, denying the request for a recalculation of benefits. The letter advised the Petitioner that he could petition the MSRS Board of Directors for a review of the Executive Director's decision by filing a written petition within 60 days of receipt of the letter. (Ex. 17.)

25. On August 3, 1995, Justice Yetka did file a Petition for Review. (Ex. 18.) On September 19, 1995, MSRS issued a Notice and Order for Hearing setting this matter on for a hearing on November 1, 1995, under the Administrative Procedure Act. (Ex. 21.)

26. Upon Justice Yetka's retirement in January of 1993, MSRS transferred the sum of $541,099.00 to the Post-Retirement Fund to finance his benefit payment of $3,936.00 per month. If Justice Yetka's petition is granted and his retirement benefit is based upon the higher salary implemented in 1994, the Petitioner would receive $236.17 more per month. MSRS would be required to transfer $34,544.91 (as of June 30, 1995) to the Post-Retirement Fund from the Judge's Retirement Fund to cover the higher benefit payment.

27. When former Supreme Court Justice George Scott retired, January 4, 1993, was selected as the end of his term. His successor had been sworn in earlier due to Justice Scott's disability. Justice Scott's 1992 salary rate was used to calculate his pension benefit. Justice Scott is the only other annuitant who might be affected by a precedent established in Justice Yetka's case.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The MSRS Board of Directors and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 352.01, subd. 10, 490.122, and 14.50.

2. The Petitioner has the burden of proof to show by a preponderance of the evidence that his retirement benefits should be recalculated. *In Re City of White Bear Lake*, 311 Minn. 146, 150, 247 N.W.2d 901, 904 (1976).

3. The Petitioner's retirement benefit is to be calculated as a percentage of the " . . . compensation allotted to the office of the justice at the time of retirement . . .". Minn. Stat. § 490.025, subd. 2.

4. The Minnesota Constitution at Article VI, section 7, states that "The term of office for all judges shall be six years and until their successors are qualified." (Emphasis added).

5. Minn. Stat. § 358.05 provides that "Every person elected or appointed to any . . . public office, . . . before transacting any of the business or exercising any privileges such office, shall take and subscribe the oath defined in the Constitution of the State of Minnesota, Article V, section 6."

6. The Petitioner did not affirmatively abandon his office prior to January 4, 1995.

7. The Petitioner's final day in office was January 3, 1993, which was the date of his retirement.

8. The Petitioner's compensation at the time of his retirement was $89,052.00.

9. Minn. Stat. § 541.07(5) is inapplicable to this contested case proceeding.

10. The above Conclusions are arrived at for the reasons set out in the Memorandum which follows.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the MSRS Board of Directors affirm the decision of the Executive Director and deny the Petition for Review.

Dated this 21st day of November, 1995

/s/
GEORGE A. BECK
Administrative Law Judge

Reported: Tape recorded.
No transcript prepared.

MEMORANDUM

The Petitioner, Justice Lawrence Yetka, seeks a review of the denial of his request for a recalculation of his retirement benefits by the Executive Director of MSRS. As the Findings of Fact indicate, a 6 percent judicial pay increase was effective on January 4, 1993. The Petitioner's retirement benefit was based upon the salary paid to justices prior to January 4, 1993. This determination was made by MSRS based upon information supplied by the Minnesota Supreme Court administration, which reported that the Petitioner's final annual salary was $89,052.00, which was the amount prior to the 6 percent increase.

The Petitioner's argument can be simply stated. The statute applied by MSRS to determine his retirement benefit indicates that his benefit is to be calculated as a percentage of the "compensation allotted to the office of the Justice at the time of retirement". Minn. Stat. § 490.025, subd. 2 (1992). Justice Yetka argues that when he retired, is controlled by the Minnesota Constitution, which states in relevant part, "The term in office of all judges shall be six years and until their successors are qualified." Minnesota Constitution, Article VI, section 7 (Emphasis added). Therefore, the Petitioner argues, since his term of office did not end until Justice Page was sworn in at 8:30 a.m. on January 4, 1993, he did not retire until that time and is entitled to receive a retirement benefit based upon the salary effective on January 4, 1993. Justice Yetka points out that he took no affirmative steps to abandon his office prior to what would be the end of his term according to law.

MSRS suggests that it lacks the authority to resolve the issue of the amount of Justice Yetka's final salary since this was determined by the Supreme Court and communicated to MSRS. It suggests that its authority is limited to assuring that the pension benefit is based upon the salary actually paid. MSRS argues, therefore, that it

reasonably relied upon the information it received from the Supreme Court as well as representations concerning the retirement date submitted in documents received from Justice Yetka himself. It seems clear, however, that MSRS's authority is broader than it suggests. Elsewhere, MSRS suggests that it has sole authority over judicial retirements under Minn. Stat. § 490.122, that it has final power to determine the status of any individual and employee of the State under Minn. Stat. § 352.03, subd. 10, and that the Executive Director has the authority and duty to initially determine benefit amounts under Minn. Stat. § 352.03, subd. 6. In an appropriate case, MSRS has the authority and duty to interpret or look beyond information submitted by an employer in order to fulfill its statutory responsibility to determine appropriate benefit amounts. See *In Re Application of Allers*, 533 N.W.2d 646 (Minn. Ct. App. 1995). In this case, it is obligated to interpret and apply the relevant statutory and constitutional provisions.

MSRS also asserts that this request should be denied because the applicable statute of limitations bars judicial enforcement of the claim. It refers to Minn. Stat. § 541.07(5) which requires actions for wages to be commenced within two years. MSRS suggests that since retirement compensation constitutes deferred payment of a part of a salary, that it is subject to the two-year Statute of Limitations. However, as is conceded by MSRS, the statute does not apply or limit an administrative contested case proceeding. An "action" has been interpreted to mean a judicial proceeding but not an administrative proceeding. *In Re Wage and Hour Violations of Holly Inn, Inc.*, 386 N.W.2d 305 (Minn. App. 1986); *Har-Mar, Inc. vs. Thorsen & Thorshov, Inc.,* 218 N.W.2d 751, 754 (Minn. 1974). Even if the Statute of Limitations is considered only by analogy, the Petitioner argues that pension benefits are not wages, but a separate contractual and statutory entitlement for which he provided substantial consideration. The statute defines wages, but does not specifically include pension benefits. That question does not need to be decided in this proceeding. As a matter of policy, however, given the plenary authority provided to MSRS in regard to the determination of pension benefits, it would seem unwise to preclude the agency from correcting mistakes which could seriously affect annuitants simply because they were not discovered within the statutory limitation upon court actions to recover wages.

MSRS also argues, as a matter of policy, that "salary" is the cornerstone of a defined benefit retirement plan. It suggests that even though the old judge's plan is based upon final compensation, as opposed to the Uniform Plan's utilization of "average high-five salary", the purpose should be the same, namely to relate benefits to the employee's earnings during the period preceding retirement. MSRS points out that the salary amount which the Petitioner asks that his pension be based upon was never paid to him, nor were any pension contributions paid to the Judge's Retirement Fund for Justice Yetka based upon the increased salary. The Petitioner urges that language of the statute and Constitution must prevail over any conception of what constitutes good pension policy.

The parties have discussed several legal authorities which may have a bearing on this issue. In this case, the Petitioner contends that he remained a Justice until the moment that his successor was sworn in. MSRS contends that the case of *State ex rel.*

Farrer vs. McIntosh, 109 Minn. 18, 122 N.W. 464 (1909) reh'g denied 126 N.W. 1135 (1909) stands for the proposition that even though the first day of a new public term in office begins at midnight, an incoming officer should have a reasonable time at the beginning of the business portion of the new day to qualify and assume his or her duties. In the *McIntosh* case, the new Board of County Commissioners was not sworn in until 1:30 p.m. on January 4, 1909. The old County Board met that morning and appointed a Sheriff to fill an unexpired term. The Supreme Court determined that the old County Board lacked authority to do so since the statute provided that the term of office began on the first Monday in January next succeeding the election and the State Constitution provided that the official year commences on the first Monday of January, at which time all terms of office terminate. A statute did provide that the county commissioners held office until their successors were elected and qualified. 126 N.W. at 1135. The case stands for the common sense proposition that an incoming officer need not be sworn in at 12:01 a.m. on the day he or she takes office in order to serve in an official capacity for that day and in order to be paid for the day.

MSRS also cited *State ex rel. Smallwood vs. Windom*, 131 Minn. 191, 155 N.W. 629 (Minn. 1915) as supporting the proposition that the Petitioner's retirement was more akin to an abandonment of any right he may have had to "hold over". In the *Windom* case, the court noted that an incumbent may abandon an office even in the face of a hold-over provision, but that the evidence must indicate that the officer intended to abandon it. 155 N.W. at 631. The Petitioner took no affirmative steps to abandon his office. The various dates indicated in the applications and correspondence submitted into evidence merely document the uncertainty of the parties as to the precise date of retirement. They do not support a conclusion that Justice Yetka intended to relinquish his office prior to the end of his term.

The parties have also cited a recent Attorney General's Opinion issued on December 15, 1994, which involved a situation in which an incumbent judge was defeated in an election, but where the election victor died before the new term of office began. Citing the Minnesota Constitution, Article VI, section 7, the Attorney General offered the opinion that the incumbent judge who was defeated in the election should remain in office until his successor, the Governor's appointee, took office. (Ex. 15.) In that case, a vacancy in the judicial office was deemed to take place when the new term of office began. While the opinion underlines the continued vitality of the constitutional hold-over provision, it does not specifically address at what time of day the term of office would end.

The Minnesota Constitution dictates that Justice Yetka was in office until Justice Page qualified. The statute provides that the Petitioner's retirement benefit is a percentage of the compensation allotted to the office at the time of retirement. The facts involved in this particular proceeding compel a conclusion that Justice Yetka retired on January 3, 1994, and is therefore not entitled to retirement benefits based upon the salary paid to Justice Page beginning January 4, 1993. Justice Yetka never received the higher salary nor made any claim upon it. The higher pension deductions, which would be applicable to the higher salary, were never made on behalf of Justice

Yetka. There is no evidence in this record, nor does the Petitioner claim, that he performed any duties associated with the Office of Supreme Court Justice on January 4, 1995. Additionally, the first day for which the Petitioner was paid retirement benefits was January 3, 1993.

The record does not support a conclusion that the Petitioner relied in any fashion on the prospect of receiving a higher pension based upon the new higher salary. In fact, Justice Yetka raised the question of whether he was entitled to a higher benefit with MSRS in 1992 and, based upon the agency's reply at that time, apparently concluded that he was not entitled to the higher benefit once he learned that the new salary was not to be implemented until January 4, 1993. The assumption of all the parties at the end of 1992 and the beginning of 1993 that the last day of the Petitioner's employment was either January 1, 2 or 3 of 1993. This assumption comports with a common sense determination that two justices cannot be in office on a single day, namely January 4, 1993. Justice Page was compensated for that entire day at the increased salary whereas Justice Yetka was not. The reason that MSRS, the Supreme Court Administrator, and an experienced jurist such as the Petitioner, all assumed that he was retiring prior to January 4, 1993, is that it was a reasonable interpretation of the situation. The record indicates only one other retirement benefit case involving a justice which may have any relevance. In the case of Justice George Scott who retired on January 4, 1993, but whose retirement benefits were based upon the 1992 salary rate.

The Petitioner argues that it is not reasonable to equate his final salary with "compensation allotted to the office of the Justice". He argues that the compensation allotted to the <u>office</u> on January 4, 1993, was the higher salary, $94,395.00. He also suggests that the word "allotment" connotes something unique, namely money available to be paid or an apportionment of the compensation. In this case, however, there was no apportionment between the two justices. The Petitioner's argument requires one to divorce the office from the office holder. The 1973 statute specifically stated, "his office", while the current statute is gender neutral. In either case, it does not appear to be a sound interpretation to conclude that the Petitioner's pension benefit should be unrelated to his compensation. The Petitioner has not provided any legal authority to demonstrate that "compensation allotted to the office of the Justice" should be divorced from his final compensation. The *McIntosh* case, *supra*, indicates that a predecessor may not have authority on the day a successor is sworn in. By analogy, Justice Yetka cannot be said to have been in office on January 4, 1993, or to have obtained any rights or benefits associated with holding the office on that date.

Although the Petitioner presents a plausible technical argument based upon the constitutional and statutory language, the more reasonable interpretation of those provisions, based upon the facts of this case and what little precedent is available, is that the Petitioner retired on January 3, 1993, and that the Executive Director therefore made an appropriate calculation of his pension benefit by basing it on the salary in effect prior to January 4, 1993. The Petitioner has failed to sustain his burden of proof to show that his benefits should be recalculated.

G.A.B.

[1] The 1973 statutory language was later amended to base the pension on “the compensation allotted to the office of the justice at the time of retirement . . .”. (Ex. 1.)

[2] *Page v. Carlson*, 488 N.W.2d 274 (Minn. 1992)